IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 3093 OF 1996

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

M/S REGAL YARN AND LOOMS INDUSTRIES PVT LTD
VERSUS
GUJATAT STATE FINANCIAL CORPORATION & ORS

Appearance:
MR MANOJ N POPAT for the Petitioner
None present for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Order : 27/04/2000

C A V JUDGMENT

#. The petitioner prayed for following reliefs in the

Special Civil Application :-

(A) The Honourable Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction, quashing the setting aside the entire proceedings relating to the petitioners factory.

(B) The Honourable Court may be further pleased to quash and set aside any decision taken by the respondents in accepting the offer of anyone with respect to the sale of the factory premises of the petitioner's company;

(C) The Honourable Court may be pleased to issue appropriate writ, order or direction to the respondents to maintain status quo with respect to the petitioner's factory / premises named and styled as M/s.Regal Yarn & Looms Industries Private Limited, having its factory premises at Sarigam G.I.D.C. Shed No : C-1, 704, District Bulsar.

(D) The Honourable Court may be pleased to give appropriate directions to the respondents to permit the petitioner to make the payment of outstanding dues to GSFC by way of granting reschedulement of payment and be pleased to release the property of the petitioner from the attachment of GSFC.

(E) The Honourable Court may be pleased to declare that the entire proceedings carried out by the respondent are null and void;

(F) Pending hearing and final disposal of this Writ, Petition, the Honourable Court may be pleased to direct the respondents to maintain status quo with respect to the property of the petitioner-company, named and styled as M/s.Regal Yarn & Looms Industries Private Limited, and be further pleased to direct the respondent not to take any further steps relating to the factory of the petitioner company.

(G) Pending hearing and final disposal of this petition, the Honourable Court may be pleased to direct the respondents not to hand over the possession of the petitioner-company's property, named and styled as M/s.Regal Yarn & Looms Industries Private Limited, situated at GIDC, Sarigam Shed No.C-1, District : Valsad, to any other person.

(H) Pending hearing and final disposal of this petition, the Honourable Court may be pleased to direct the respondents not to take any final decision relating to the offer of any party, with respect to the auction of petitioner-company's factory situated at GIDC, Shed No. C-1, Sarigam District, Valsad. and

(I) Such other and further reliefs, as are deemed fit, in the facts and circumstances of this case may kindly be granted.

#. This writ petition is presented by the petitioner in the court on 23/4/96. It has come up for preliminary hearing on 13/1/97 on which day notice was issued but interim relief was not granted. The matter was then admitted on 16/2/2000.

#. The petitioner has taken term loan of Rs.15,18,000/= from Gujarat State Financial Corporation in the year 1987. He made default in payment of this loan amount. Reply to the Special Civil Application is filed by the Corporation and the petitioner has not filed rejoinder thereto. Meaning thereby the averments made therein are to be taken as admitted.

#. The term loan, as per the terms and conditions was to be repaid within a period of 7 years in 21 quarterly installments by the petitioner. From the very beginning the petitioner was not making any payment towards the loan amount. Several opportunities were given to the petitioner for repayment of the same by the Corporation. On 10/10/91 first show cause notice was issued to the petitioner and it was called upon to repay the amount and called for personal hearing but the petitioner even not cared to reply to this show cause notice. On 8/4/92 a final notice under Section 29 was issued and the petitioner was called upon to repay total outstanding

dues. At this stage, the petitioner approached to the corporation for reschedulement of the loan amount. This request of the petitioner was accepted by the Corporation on 10/9/92. The corporation rescheduled the payment of the loan and given sufficient time to repay the outstanding dues but the petitioner did not want to repay the loan and he could not stand to his commitment as what he undertaken under the reschedulement. On 28/12/1993 the Corporation issued a second time show cause notice and called upon the petitioner to repay the entire outstanding dues and also for personal hearing on 10/1/1994. The petitioner did not pay any heed to the said show cause notice nor paid any amount towards outstanding dues. On 15/1/94 a final notice under Section 29 of the Act was issued to the petitioner and called upon him to clear total outstanding dues of Rs.10,79,634/= as on 1/11/93 within 10 days of the receipt of the said notice. It was made clear that in case of default thereof the Corporation to proceed against the petitioner under Section 29 of the Act for the recovery of the entire outstanding dues by taking possession of the unit and to sell the property mortgaged / hypothecated. The petitioner did not cared even to reply to this notice. On 28/1/94 the Corporation sent a telegram to the petitioner requesting him to remit amount mentioned therein on or before 6/2/94 failing which the Corporation will take possession of the unit under Section 29 of the Act. The petitioner has not cared to reply to the telegram and on 4/3/93 the Corporation has taken the possession of the unit in exercise of its power conferred under Section 29 of the Act. The assets of the unit were valued through Government Approved Valuer and as per the valuation report the total value of the assets was reported to be Rs.13,82,290/-. Thereafter the Corporation has issued advertisement in different newspapers and made wide publicity for sale of the assets of the petitioner's unit. These advertisements were made on 16/3/94, 20/4/94, 5/9/94, 24/10/94 and 26/10/904. Though this long period has been taken by the Corporation in advertising for sale of the unit, the petitioner in the meantime has not taken care to pay heed to any of the said advertisements, notice nor any pie has been paid towards dues. Ultimately on 13/12/94 the Corporation in exercise of its power conferred under Section 29 of the Act sold the mortgage / hypothecated assets to Shri Ketan C. Shah for Rs.4,15,555/=. Against this sale the petitioner has not raised any objection for considerably long period of one year and 4 months. In case what the learned counsel for the petitioner contending that the assets of the value of Rs.13 lacs and odd has been sold on the throw away price would have been correct then he

should have taken all the care and should have brought a prospective buyer for this amount. He could have also arranged the sale of assets by private negotiation if really the assets would have been of the valued as what it is stated. It is really shocking that the petitioner has not participated in the proceedings of the auction. When the assets were sold to the third party after waiting for long he has now chosen to file this Special Civil Application in which all these objections are being taken. This conduct of the petitioner is very relevant and only on the basis of which this court do not consider it to be a fit case where any relief has to be granted in his favour. The possession of the assets has also been handed over to Shri Ketan C. Shah on 31/1/1995 by the Corporation.

#. The valuation of the assets valued by the Government approved Valuer is not that much relevant in every case. The Government Approved Valuer valued the property / assets to Rs.13 lacs but in the open auction what was the purchased price of the assets is important. The very fact that despite of giving of several advertisements ultimately the corporation got a buyer for Rs.4,15,555/= goes to show that the assets were valued by the Government Approved Valuer is not the real market value. The petitioner may value the property for whatever the amount it likes and similarly the valuation may be made by the Government Approved Valuer but it is not the value on which the Corporation could have compelled the purchaser to purchase the assets. The Corporation has adopted a reasonable mode to auction the assets. It is not the case where the petitioner has alleged any malafides against the Corporation or its officers in conducting of the auction of the assets. After taking all reasonable steps, care and precaution in the auction if the corporation could not get the value of the assets as what it is valued by the Government Approved Valuer it is not the fault of the Corporation or its officers. The petitioner is in fact responsible for all these things. In the facts and circumstances of this case inference can be drawn that the petitioner was also knowing well that the market value of the assets is less than what it is assessed by him or assessed by the Government Approved Valuer and that is the reason that he has not cared to participate in the auction proceedings. In case this property would have been of the value as what it is stated by the petitioner he could have requested for the sale of the same by private negotiation or could have brought the prospective buyer. But that has not been done. The petitioner has not impleaded Shri K.C.Shah as party to this petition. The reply to the Special Civil

Application has been filed by the Corporation long back. The coy of the same was given to the petitioner's counsel on 22/6/98 but the petitioner has not taken any care for all these years to implead that person as a party. In the absence of Shri K.C.Shah the relief of the nature as prayed for by the petitioner in this Special Civil Application otherwise also cannot be granted. Shri K.C.Shah was a necessary party to these proceedings and the petitioner has not impaled him as a party. The petition suffers from the defect of nonjoinder of the necessary party.

In the result, the Special Civil Application fails and the same is dismissed with costs. Rule discharged.

(S.K.Keshote, J.)

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